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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/097,023	06/12/1998	JILL MCFADDEN	290252021800	2472

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CROMPTON, SEAGER & TUFTE, LLC
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MINNEAPOLIS, MN 55403-2420

EXAMINER

MACNEILL, ELIZABETH

ART UNIT	PAPER NUMBER
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3767

MAIL DATE	DELIVERY MODE
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11/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/097,023

Applicant(s)

MCFADDEN ET AL.

Examiner

Elizabeth R. MacNeill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-22, 24-42, 44-48, 51-56, 58, 59 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17-22, 24-42, 44-48, 53-56, 58, 59 and 61-63 is/are rejected.
- 7) ☒ Claim(s) 51 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This action is in response to the BPAI decision received 19 September 2007, the examiner being affirmed-in-part.

Drawings

The amendment filed 5/10/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: fig. 5 shows new matter of a braid (210) that is spaced free from the inner and outer liners. Fig. 6 shows new matter of a coil (216) that is established in contact with an inner liner, but free from the outer liner.

Applicants are required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 13, 19, 20, 24, 27, 31, 40, 46, 47, 50, 53, 54, 55, 56, 58, and 59, 61-63 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 05-220225 in view of SAMSON (U. S. Patent No. 5,702,373). JP 05-220225 shows a knitted reinforcing metal member 35 with an inner liner and outer cover. Samson is relied upon for

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description of the JP 05-220225 document. The loops of the knit are of the same size because the outer diameter of the catheter is consistent.

Claims 1-5, 13, 14, 18, 19, 20, 24-27, 31-33, 40, 41, 45, 46, 47, 50, 53-56, 58, and 59, 61-63 are rejected under 35 U.S.C. 102(e) as being anticipated by LEONI (U. S. Patent No. 5,772,681). Leoni describes a catheter having a knitted reinforcing member of nitinol between an inner liner and outer cover that is generally not expandable in the section adjacent to the balloon section (1:13-15, 2:48-3:20, 4:10-20, 5:28-29). The loops of the knit are of the same size because the outer diameter of the catheter is consistent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-12, 15, 21, 28-30, 34-39, 42, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05-220225 or LEONI and further in view of ANDERSEN et al. (U. S. Patent No. 5,674, 276). JP 05-220225 or Leoni disclose the claimed invention except for using multifilaments with first and second materials of a metal and a polymer. Andersen teaches using multifilaments with first and second materials of a metal and a polymer to give desired characteristics to the knitted material for making tubular medical devices where the tube has a knitted member between an inner liner and outer cover (1:50 - 2:46, 4:32-43, 6:5-43, 8:2-7). The tubular device,

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disclosed by Anderson, is made of a knitted member that generally does not expand, but rather experiences plastic deformation to increase its dimensions (3:19-21).

Andersen also teaches the use of radiopaque material to aid in visualizing the device internally. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Andersen in the invention of JP 05-220225 or Leoni in order to tailor the tubular device with different properties to achieve different functions (6:54-58). The use of stainless steel and platinum in medical devices to make use of their notoriously well-known properties would be obvious to the ordinary artisan and Applicants have not stated that they have achieved any unexpected results different from these materials well-known properties and usage.

Claims 17, 22, 44, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05-220225 or LEONI as applied to claims 54, 1, and 58 respectively above, and further in view of JANG et al. (U. S. Patent No. 4,898,591). JP 05-220225 or LEONI disclose the claimed invention except for the materials of construction of the inner and outer liner and cover respectively. Jang teaches the use of polyethylene as an inner liner and outer cover of a reinforced catheter to provide desired mechanical properties. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Jang in the invention of JP 05-220225 or Leoni in order to achieve the desired flexibility, torsion and column rigidity for the catheter.

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Allowable Subject Matter

Claims 51 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM



KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

